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14 ATTORNEYS FOR DEFENDANT  
15 BA SPORTS NUTRITION, LLC

16 UNITED STATES DISTRICT COURT  
17  
18 NORTHERN DISTRICT OF CALIFORNIA

19 MARC SILVER, HEATHER PEFFER,  
20 ALEXANDER HILL, individually and on  
21 behalf of all others similarly situated,

22 Plaintiffs,

23 v.

24 BA SPORTS NUTRITION, LLC,

25 Defendant.

Case No. 3:20-cv-00633-SI

**DEFENDANT BA SPORTS NUTRITION,  
LLC'S ANSWER, DEFENSES AND  
AFFIRMATIVE DEFENSES TO  
COMPLAINT**

**Before:** Hon. Susan Illston

**Compl. Filed:** January 28, 2020

**FAC Filed:** July 7, 2020

**Trial Date:** None

1 Defendant BA Sports Nutrition, LLC (“Defendant”) by and through its undersigned  
2 counsel, hereby answer Plaintiffs’ Complaint as follows:

3 **ANSWER**

4 Paragraph numbers in this Answer correspond to the Complaint’s paragraph numbers and  
5 respond to the allegations of that paragraph, up to the Defenses and Affirmative Defenses section.  
6 To the extent that the headings in the Complaint outside of the numbered allegations are intended  
7 to be allegations as opposed to mere argument, Defendant denies them. To the extent that  
8 Defendant has not specifically denied any allegation of the Complaint, the allegations are denied.

9 1. Defendant admits that one product it manufactures and sells is BodyArmor Sports  
10 Drink under the trademark BodyArmor SuperDrink® and that it is the third largest seller of sports  
11 drinks in the U.S. as compared to Gatorade and Powerade. Defendant denies that Coca Cola has  
12 “joined forces” with Defendant, whatever that means.

13 2. Defendant admits that it tries to sell its products (otherwise it would be a terrible  
14 business and plaintiffs’ lawyers would not be suing it). The rest of Paragraph 2 states a legal  
15 argument and/or conclusion for which no response is required. To the extent one is, Defendant  
16 denies the allegations in this paragraph.

17 3. Defendant admits that some of its drinks have used the phrase “superior hydration”  
18 on them. The remainder of Paragraph 3 states a legal argument and/or conclusion for which no  
19 response is required. To the extent one is, Defendant denies the allegations in this paragraph.

20 4. Defendant lacks information sufficient to form a belief about what Plaintiff Hill saw  
21 or did not see. The remainder of Paragraph 4 states a legal argument and/or conclusion for which  
22 no response is required. To the extent one is, Defendant denies the allegations in this paragraph.

23 5. Paragraph 5 states legal arguments and/or conclusions for which no response is  
24 required. To the extent one is, Defendant denies the allegations in this paragraph.

25 6. Footnote 4 relates to a purported prosecution by California against Gatorade for  
26 making some type of video game that had nothing to do with Defendant or this case. The  
27 remainder of Paragraph 6 states legal arguments and/or conclusions about what Plaintiffs or third  
28

1 parties supposedly “perceive,” for which no response is required. To the extent one is, Defendant  
2 denies the allegations in this paragraph.

3 7. To the extent that it is intelligible, Paragraph 7 states legal arguments and/or  
4 conclusions for which no response is required. To the extent one is, Defendant denies the  
5 allegations in this paragraph.

6 8. Defendant admits that its products supported by research on sports beverages and  
7 nutrition. Defendant admits that the link cited in the pleading goes to Gatorade’s website, which  
8 speaks for itself. To the extent this paragraph makes characterizations about GSSI, Defendant  
9 lacks information sufficient to form a belief as to the truth or falsity of such allegations and on that  
10 basis denies them.

11 9. Defendant admits that its products are supported by research on sports beverages  
12 and nutrition. It is unclear if the “research” in this paragraph refers to research done by Gatorade or  
13 what research this paragraph is referring to, and on that basis Defendant denies the allegations in  
14 Paragraph 9.

15 10. Defendant denies Paragraph 10. The NAD is an industry body that seeks to resolve  
16 disputes between industry members. NAD does not have discovery and other procedures used in  
17 the truthfinding process. NAD does not “explain” or “decide” anything.

18 11. Paragraph 11 states a legal argument and/or conclusion for which no response is  
19 required. To the extent one is, Defendant denies the allegations in this paragraph.

20 12. Paragraph 12 states legal arguments and/or conclusions based on purported  
21 interpretations of statutes and laws for which no response is required. To the extent one is,  
22 Defendant denies the allegations in this paragraph.

23 13. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
24 or falsity of the allegations in Paragraph 13 and on that basis denies them.

25 14. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
26 or falsity of the allegations in Paragraph 14 and on that basis denies them. Defendant further  
27 denies there is any “class period.”  
28

1           15. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
2 or falsity of the allegations in Paragraph 15 and on that basis denies them.

3           16. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
4 or falsity of the allegations in Paragraph 16 and on that basis denies them.

5           17. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
6 or falsity of the allegations in Paragraph 17 and on that basis denies them. BodyArmor is a  
7 lawfully marketed and sold product.

8           18. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
9 or falsity of the allegations in Paragraph 18 and on that basis denies them.

10          19. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
11 or falsity of the allegations in Paragraph 19 and on that basis denies them.

12          20. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
13 or falsity of the allegations in Paragraph 20 and on that basis denies them. Defendant denies that  
14 any of its conduct was “improper.”

15          21. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
16 or falsity of the allegations in Paragraph 21 and on that basis denies them.

17          22. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
18 or falsity of the allegations in Paragraph 22 and on that basis denies them.

19          23. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
20 or falsity of the allegations in Paragraph 23 and on that basis denies them. Defendant further  
21 denies there is any “class period.”

22          24. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
23 or falsity of the allegations in Paragraph 24 and on that basis denies them.

24          25. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
25 or falsity of the allegations in Paragraph 25 and on that basis denies them.

26          26. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
27 or falsity of the allegations in Paragraph 26 and on that basis denies them. BodyArmor is a  
28 lawfully marketed and sold product.

1           27. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
2 or falsity of the allegations in Paragraph 27 and on that basis denies them.

3           28. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
4 or falsity of the allegations in Paragraph 28 and on that basis denies them.

5           29. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
6 or falsity of the allegations in Paragraph 29 and on that basis denies them. Defendant denies that  
7 any of its conduct was “improper.”

8           30. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
9 or falsity of the allegations in Paragraph 30 and on that basis denies them.

10          31. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
11 or falsity of the allegations in Paragraph 31 and on that basis denies them.

12          32. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
13 or falsity of the allegations in Paragraph 32 and on that basis denies them.

14          33. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
15 or falsity of the allegations in Paragraph 33 and on that basis denies them. Defendant further  
16 denies there is any “class period.”

17          34. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
18 or falsity of the allegations in Paragraph 34 and on that basis denies them. BodyArmor is a  
19 lawfully marketed and sold product.

20          35. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
21 or falsity of the allegations in Paragraph 35 and on that basis denies them.

22          36. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
23 or falsity of the allegations in Paragraph 36 and on that basis denies them.

24          37. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
25 or falsity of the allegations in Paragraph 37 and on that basis denies them. Defendant denies that  
26 any of its conduct was “improper.”

27          38. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
28 or falsity of the allegations in Paragraph 38 and on that basis denies them.

1           39. Defendant denies that it is a limited liability corporation organized under the laws of  
2 the State of Delaware.

3           40. Defendant admits that its principal place of business is 17-20 Whitestone  
4 Expressway, Whitestone, New York 11357.

5           41. Defendant admits that it is the third-largest sports drink seller in the U.S. and that  
6 the Coca-Cola Company is an equity holder.

7           42. Paragraph 42 states a legal argument and/or conclusion regarding subject matter  
8 jurisdiction as to which no response is required. Defendant denies that there are any damages in  
9 this case. Defendant lacks knowledge or information sufficient to form a belief as to the truth or  
10 falsity of the remaining allegations in this paragraph and on that basis denies them.

11           43. Paragraph 43 states a legal argument and/or conclusion regarding personal  
12 jurisdiction as to which no response is required. Defendant lacks knowledge or information  
13 sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph and  
14 on that basis denies them.

15           44. Paragraph 44 states a legal argument and/or conclusion regarding venue as to which  
16 no response is required. Defendant lacks knowledge or information sufficient to form a belief as to  
17 the truth or falsity of the remaining allegations in this paragraph and on that basis denies them.

18           45. Paragraph 45 states a legal argument and/or conclusion regarding intra-district  
19 assignment as to which no response is required. Defendant lacks knowledge or information  
20 sufficient to form a belief as to the truth or falsity of the remaining allegations in this paragraph and  
21 on that basis denies them.

22           46. Paragraph 46 states a legal argument and/or conclusion for which no response is  
23 required. To the extent one is, Defendant denies the allegations in this paragraph.

24           47. Paragraph 47 states a legal argument and/or conclusion for which no response is  
25 required. To the extent one is, Defendant denies the allegations in this paragraph.

26           48. Defendant denies the allegations in Paragraph 48.

27           49. Defendant admits the BodyArmor labels depicted in Paragraph 49 include the  
28 phrase "Superior Hydration."

1           50. Defendant admits that this paragraph partially quotes one of 15 definitions of the  
 2 word “superior” offered on the webpage cited in this paragraph and footnote 7. Defendant lacks  
 3 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in  
 4 Paragraph 50 about what Plaintiffs purportedly believed, and on that basis denies them.

5           51. Defendant admits that proper hydration is important to athletes and others and that  
 6 dehydration can cause cramps, headaches, performance impairment and other symptoms noted in  
 7 this paragraph. The remainder of Paragraph 51 states legal arguments and/or conclusions for which  
 8 no response is required. To the extent one is, Defendant denies the allegations in this paragraph.

9           52. Defendant admits that drinking sports beverages is a good way to keep hydrated.  
 10 The remainder of Paragraph 52 states legal arguments and/or conclusions for which no response is  
 11 required. To the extent one is, Defendant denies the allegations in this paragraph.

12           53. Paragraph 53 states legal arguments and/or conclusions for which no response is  
 13 required. To the extent one is, Defendant denies the allegations in this paragraph.

14           54. Defendant denies that a Google search of “hydration research sports” yields “over  
 15 21,900 scholarly articles since 2016.” In actuality, running the search yields only 203 hits, and it is  
 16 unclear if all of them are “scholarly articles,” whatever that means. Some of the results do not  
 17 appear to relate to hydration or sports beverages, such as Eating with Purpose, on page 3 of the  
 18 search results. And other results produced by the search predate 2016. Whatever writings are  
 19 referenced in the paragraph speak for themselves. The remainder of the allegations in this  
 20 paragraph are arguments or legal conclusions. To the extent any further response is required to this  
 21 paragraph, the allegations are denied.

22           55. Defendant lacks knowledge or information sufficient to form a belief about the 645  
 23 studies referenced in the paragraph. Any studies speak for themselves in any event. The remainder  
 24 of the allegations in this paragraph are arguments or legal conclusions. To the extent any further  
 25 response is required to this paragraph, the allegations are denied.

26           56. Defendant admits that the late Kobe Bryant was an 18-time All-Star whose tweets  
 27 speak for themselves. Defendants admit that Kobe drank Body Armor. Defendant admits that  
 28 Kobe has scored more points than any other guard in the history of basketball. Defendant admits

1 that Kobe's estate has an indirect ownership interest in Defendant. Defendant denies the other  
2 arguments, and conclusions in this paragraph, which require no response in any event.

3 57. Defendant admits that Mike Trout is an All-Star outfielder whose statements speak  
4 for themselves, and that he has an ownership interest in Defendant. Defendant denies the various  
5 other conclusions and argumentative statements in this paragraph, which do not require a response  
6 in any event.

7 58. Defendant admits that it retweeted a statement by someone who said  
8 "#OnlyYouCan stay better hydrated after a workout - 😊 It's been kinda hard keeping up a normal  
9 workout regime during this time, but I'm doing my best. 💪" BodyArmor helps many people keep  
10 hydrated, provides potassium and vitamins and replaces lost electrolytes. To the extent any  
11 response is necessary to the arguments therein, Defendant denies the allegations in Paragraph 58.

12 59. Defendant denies the allegations in Paragraph 59.

13 60. Defendant's labels speak for themselves. To the extent the pleading is making  
14 arguments about the labels, no response is necessary and Defendant denies the allegations in  
15 Paragraph 60.

16 61. Defendant's labels speak for themselves. To the extent the pleading is making  
17 arguments about the labels, no response is necessary and Defendant denies the allegations in  
18 Paragraph 61.

19 62. Defendant admits that this paragraph includes partial snippets from purported  
20 articles that claim to be quoting Mike Repole. Defendant denies any remaining allegations in  
21 Paragraph 62.

22 63. It is not clear what message is being referenced in this paragraph, and Defendant  
23 obviously lacks knowledge or information sufficient to form a belief as to the truth or falsity of the  
24 allegations about what message Plaintiffs supposedly believed they were receiving in Paragraph 63  
25 and on that basis denies it.

26 64. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
27 or falsity of the allegations in Paragraph 64 and on that basis denies them.

28



1           65. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
2 or falsity of the allegations in Paragraph 65 and on that basis denies them.

3           66. Paragraph 66 states a legal argument and/or conclusion for which no response is  
4 required. To the extent any response is required Defendant denies the allegations in this paragraph.

5           67. Paragraph 67 states a legal argument and/or conclusion for which no response is  
6 required. To the extent any response is required Defendant denies the allegations in this paragraph.

7           68. Paragraph 68 states a legal argument and/or conclusion for which no response is  
8 required. To the extent any response is required Defendant denies the allegations in this paragraph.

9           69. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
10 or falsity of the allegations in Paragraph 69 and on that basis denies them.

11           70. Defendant denies that the California Attorney General has made any statements  
12 about Defendant and note that the citation for this proposition is a press release about a lawsuit that  
13 California brought against Gatorade for making a video game. The cited press release speaks for  
14 itself. The remainder of the allegations in this paragraph are conclusions and arguments to which  
15 no response is required. To the extent one is, the allegations are denied.

16           71. Paragraph 71 pertains to a claim which the Court has dismissed, and thus no  
17 response is required. (Dkt. 40). Paragraph 71 states a legal argument and/or conclusion for which  
18 no response is required. Defendant admits that the vitamin content of its products is accurately  
19 stated on its labels in compliance with FDA regulations. Defendant lacks sufficient information to  
20 admit or deny what Plaintiffs' supposed "perceptions" were. To the extent any response is further  
21 needed, any remaining allegations in this paragraph are denied.

22           72. Paragraph 72 pertains to a claim which the Court has dismissed, and thus no  
23 response is required. (Dkt. 40). Paragraph 72 states a legal argument and/or conclusion for which  
24 no response is required. To the extent one is, Defendant denies the allegations in this paragraph.

25           73. Paragraph 73 states a legal argument and/or conclusion for which no response is  
26 required. To the extent any response is required Defendant denies the allegations in this paragraph.

27           74. Paragraph 74 states a legal argument and/or conclusion for which no response is  
28 required. To the extent any response is required Defendant denies the allegations in this paragraph.

1           75. Defendant denies that the FDA has done anything to regulate sugar in the manner  
2 Plaintiffs seek, and specifically notes the Ninth Circuit’s decision in *Perfect Bar*, which held that  
3 claims identical to Plaintiffs were preempted precisely because the FDA has declined to impose  
4 any health claim regulations on sugar. Any article cited in footnote 25, which exceeds a page in  
5 length, speaks for itself. The remainder of the allegations in Paragraph 75 state legal arguments  
6 and/or conclusions for which no response is required. To the extent any response is required  
7 Defendant denies any other allegations in this paragraph.

8           76. Defendant denies the allegations in Paragraph 76.

9           77. Defendant denies the allegations in Paragraph 77.

10          78. Defendant denies that the California Attorney General has made any statements  
11 about Defendant or its products. Defendant admits that this paragraph purports to contain a partial  
12 quotation from a press release regarding a case against Gatorade for making a video game. To the  
13 extent any further response is necessary to this paragraph, the allegations are denied.

14          79. Defendant denies the allegations in Paragraph 79.

15          80. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
16 or falsity of the allegations in Paragraph 80 about what Plaintiffs supposedly knew or thought. The  
17 remainder of the paragraph is arguments and conclusions for which no response is required. To the  
18 extent any response is required, such allegations are denied.

19          81. The allegations in this paragraph comprise self-contradictory arguments and  
20 conclusions. To the extent any response is required, these allegations are denied.

21          82. Defendant admits that BodyArmor Sports Drink is available in various flavors and  
22 properly labeled as such.

23          83. The images in this paragraph are too small to verify if they are accurate. The actual  
24 product labels speak for themselves. To the extent any further response is required, Defendant  
25 denies the allegations in Paragraph 83.

26          84. Defendant admits that BodyArmor Sports Drink is made with natural flavors and  
27 properly labeled as containing “natural flavors.”  
28

1           85. Paragraph 85 states a legal argument and/or conclusion for which no response is  
2 required. To the extent any response is required the allegations are denied.

3           86. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
4 or falsity of the allegations in Paragraph 86 and on that basis denies them.

5           87. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
6 or falsity of the allegations in Paragraph 87 and on that basis denies them.

7           88. Paragraph 88 states a legal argument and/or conclusion for which no response is  
8 required. To the extent one is, Defendant denies the allegations in this paragraph.

9           89. Defendant denies the allegations in Paragraph 89.

10          90. Paragraph 90 states a legal argument and/or conclusion for which no response is  
11 required. To the extent any response is required, these allegations are denied.

12          91. Body Armor products are properly labeled as naturally flavored. Paragraph 91  
13 states a legal argument and/or conclusion for which no response is required. To the extent one is,  
14 Defendant denies the allegations in this paragraph.

15          92. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
16 or falsity of the allegations in Paragraph 92 about what Plaintiffs would or would not have done  
17 and on that basis denies them. The remainder of the paragraph comprises arguments and legal  
18 conclusions to which no response is required. To the extent one is, such allegations are denied.

19          93. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
20 or falsity of the allegations in Paragraph 93 about what Plaintiffs would or would not have done  
21 and on that basis denies them. The remainder of the paragraph comprises arguments and legal  
22 conclusions to which no response is required. To the extent one is, such allegations are denied.

23          94. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
24 or falsity about what Plaintiffs would or would not have done and on that basis denies them. The  
25 remainder of the paragraph comprises arguments and legal conclusions to which no response is  
26 required. To the extent one is, such allegations are denied.

27          95. Defendant denies the allegations in Paragraph 95.

28

1           96. Defendant admits that it advertises its BodyArmor Sports Drink. The ads speak for  
2 themselves. Defendant denies the remaining allegations in Paragraph 96.

3           97. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
4 or falsity of what Plaintiff Hill saw. Defendant denies the remaining allegations in Paragraph 97.

5           98. Defendant admits that it advertises its BodyArmor Sports Drink. The ads speak for  
6 themselves. Defendant denies the remaining allegations in Paragraph 98.

7           99. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
8 or falsity of the allegations in Paragraph 99 and on that basis denies them.

9           100. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
10 or falsity of the allegations in Paragraph 100 and on that basis denies them.

11           101. Defendant denies the allegations in Paragraph 101.

12           102. Defendant admits that none of its advertising or labeling is false. Paragraph 102  
13 states a legal argument and/or conclusion for which no response is required. To the extent any  
14 response is required, Plaintiffs' allegations are denied.

15           103. Defendant denies the allegations in this paragraph.

16           104. Defendant denies the allegations in this paragraph.

17           105. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
18 or falsity of the allegations in Paragraph 105 and on that basis denies them.

19           106. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
20 or falsity of the allegations in Paragraph 106 and on that basis denies them.

21           107. Paragraph 107 states a legal argument and/or conclusion for which no response is  
22 required. To the extent any response is required, these allegations are denied.

23           108. Paragraph 108 states a legal argument and/or conclusion for which no response is  
24 required. To the extent any response is required, these allegations are denied.

25           109. Paragraph 109 states a legal argument and/or conclusion for which no response is  
26 required. To the extent any response is required, these allegations are denied.

27           110. Paragraph 110 states a legal argument and/or conclusion for which no response is  
28 required. To the extent any response is required, these allegations are denied.

1           111. Paragraph 111 states a legal argument and/or conclusion for which no response is  
2 required. To the extent any response is required, these allegations are denied.

3           112. Paragraph 112 states a legal argument and/or conclusion for which no response is  
4 required. To the extent any response is required, these allegations are denied.

5           113. Paragraph 113 states a legal argument and/or conclusion for which no response is  
6 required. To the extent any response is required, these allegations are denied.

7           114. Paragraph 114 states a legal argument and/or conclusion for which no response is  
8 required. To the extent any response is required, these allegations are denied.

9           115. Paragraph 115 states a legal argument and/or conclusion for which no response is  
10 required. To the extent any response is required, these allegations are denied.

11           116. Paragraph 116 states a legal argument and/or conclusion for which no response is  
12 required. To the extent any response is required, these allegations are denied.

13           117. Paragraph 117 states a legal argument and/or conclusion for which no response is  
14 required. To the extent any response is required, these allegations are denied.

15           118. Paragraph 118 states a legal argument and/or conclusion for which no response is  
16 required. To the extent any response is required, these allegations are denied.

17           119. Paragraph 119 states a legal argument and/or conclusion for which no response is  
18 required. To the extent one is, Defendant denies the allegations in this paragraph.

19           120. Paragraph 120 states a legal argument and/or conclusion for which no response is  
20 required. To the extent any response is required, these allegations are denied.

21           121. Defendant denies the allegations in Paragraph 121.

22           122. Paragraph 122 states a legal argument and/or conclusion for which no response is  
23 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
24 further denies there is any "Class."

25           123. Paragraph 123 states a legal argument and/or conclusion for which no response is  
26 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
27 further denies there is any "Class."  
28

1           124. Paragraph 124 states a legal argument and/or conclusion for which no response is  
2 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
3 further denies there is any “Class.”

4           125. Paragraph 125 states a legal argument and/or conclusion for which no response is  
5 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
6 further denies there is any “Class.”

7           126. Paragraph 126 states a legal argument and/or conclusion for which no response is  
8 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
9 further denies there is any “Class.”

10          127. Paragraph 127 states a legal argument and/or conclusion for which no response is  
11 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
12 further denies there is any “Class.”

13          128. Paragraph 128 states a legal argument and/or conclusion for which no response is  
14 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
15 further denies there is any “Class.”

16          129. Paragraph 129 states a legal argument and/or conclusion for which no response is  
17 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
18 further denies there is any “Class.”

19          130. Paragraph 130 states a legal argument and/or conclusion for which no response is  
20 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
21 further denies there is any “Class.”

22          131. Paragraph 131 states a legal argument and/or conclusion for which no response is  
23 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
24 further denies there is any “Class.”

25          132. Paragraph 132 states a legal argument and/or conclusion for which no response is  
26 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
27 further denies there is any “Class.”  
28

1           133. Paragraph 133 states a legal argument and/or conclusion for which no response is  
2 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
3 further denies there is any “Class.”

4           134. Paragraph 134 states a legal argument and/or conclusion for which no response is  
5 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
6 further denies there is any “Class.”

7           135. Defendant repeats and incorporates its responses to each and every allegation  
8 contained in the corresponding paragraphs of Plaintiffs’ Complaint above as if fully set forth  
9 herein.

10          136. Paragraph 136 states a legal argument and/or conclusion for which no response is  
11 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
12 further denies there is any “Subclass.”

13          137. Paragraph 137 states a legal argument and/or conclusion for which no response is  
14 required. To the extent one is, Defendant denies the allegations in this paragraph.

15          138. Paragraph 138 states a legal argument and/or conclusion for which no response is  
16 required. To the extent one is, Defendant denies the allegations in this paragraph.

17          139. Paragraph 139 states a legal argument and/or conclusion for which no response is  
18 required. To the extent one is, Defendant denies the allegations in this paragraph.

19          140. Paragraph 140 states a legal argument and/or conclusion for which no response is  
20 required. To the extent one is, Defendant denies the allegations in this paragraph.

21          141. Paragraph 141 states a legal argument and/or conclusion for which no response is  
22 required. To the extent one is, Defendant denies the allegations in this paragraph.

23          142. Paragraph 142 states a legal argument and/or conclusion for which no response is  
24 required. To the extent one is, Defendant denies the allegations in this paragraph.

25          143. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
26 or falsity of the allegations in Paragraph 143 about what Plaintiffs would or would not have done  
27 and on that basis denies them. The remainder of the paragraph comprises legal arguments and/or  
28

1 conclusions to which no response is required. To the extent one is, Defendant denies these  
2 allegations.

3 144. Paragraph 144 states a legal argument and/or conclusion for which no response is  
4 required. To the extent one is, Defendant denies the allegations in this paragraph.

5 145. Paragraph 145 states a legal argument and/or conclusion for which no response is  
6 required. To the extent one is, Defendant denies the allegations in this paragraph.

7 146. Paragraph 146 states a legal argument and/or conclusion for which no response is  
8 required. To the extent one is, Defendant denies the allegations in this paragraph.

9 147. Defendant repeats and incorporates its responses to each and every allegation  
10 contained in the corresponding paragraphs of Plaintiffs' Complaint above as if fully set forth  
11 herein.

12 148. Paragraph 148 states a legal argument and/or conclusion for which no response is  
13 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
14 further denies there is any "Subclass."

15 149. Paragraph 149 states a legal argument and/or conclusion for which no response is  
16 required. To the extent one is, Defendant denies the allegations in this paragraph.

17 150. Paragraph 150 states a legal argument and/or conclusion for which no response is  
18 required. To the extent one is, Defendant denies the allegations in this paragraph.

19 151. Paragraph 151 states a legal argument and/or conclusion for which no response is  
20 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
21 further denies there is any "Subclass."

22 152. Paragraph 152 states a legal argument and/or conclusion for which no response is  
23 required. To the extent one is, Defendant denies the allegations in this paragraph.

24 153. Paragraph 153 states a legal argument and/or conclusion for which no response is  
25 required. To the extent one is, Defendant denies the allegations in this paragraph.

26 154. Paragraph 154 states a legal argument and/or conclusion for which no response is  
27 required. To the extent one is, Defendant denies the allegations in this paragraph.  
28



1           155. Paragraph 155 states a legal argument and/or conclusion for which no response is  
2 required. To the extent one is, Defendant denies the allegations in this paragraph.

3           156. Paragraph 156 states a legal argument and/or conclusion for which no response is  
4 required. To the extent one is, Defendant denies the allegations in this paragraph.

5           157. Defendant repeats and incorporates its responses to each and every allegation  
6 contained in the corresponding paragraphs of Plaintiffs' Complaint above as if fully set forth  
7 herein.

8           158. Paragraph 158 states a legal argument and/or conclusion for which no response is  
9 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
10 further denies there is any "Subclass."

11           159. Paragraph 159 states a legal argument and/or conclusion for which no response is  
12 required. To the extent one is, Defendant denies the allegations in this paragraph.

13           160. Paragraph 160 states a legal argument and/or conclusion for which no response is  
14 required. To the extent one is, Defendant denies the allegations in this paragraph.

15           161. Paragraph 161 states a legal argument and/or conclusion for which no response is  
16 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
17 further denies there is any "Class." Defendant lacks knowledge or information sufficient to form a  
18 belief as to the truth or falsity of the remaining allegations in this paragraph, and on that basis  
19 denies them.

20           162. Paragraph 162 states a legal argument and/or conclusion for which no response is  
21 required. To the extent one is, Defendant denies the allegations in this paragraph.

22           163. Paragraph 163 states a legal argument and/or conclusion for which no response is  
23 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
24 further denies there is any "Class."

25           164. Paragraph 164 states a legal argument and/or conclusion for which no response is  
26 required. To the extent one is, Defendant denies the allegations in this paragraph.

27  
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1           165. Defendant repeats and incorporates its responses to each and every allegation  
2 contained in the corresponding paragraphs of Plaintiffs' Complaint above as if fully set forth  
3 herein.

4           166. Paragraph 166 states a legal argument and/or conclusion for which no response is  
5 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
6 further denies there is any "Subclass."

7           167. Paragraph 167 states a legal argument and/or conclusion for which no response is  
8 required. To the extent one is, Defendant denies the allegations in this paragraph.

9           168. Paragraph 168 states a legal argument and/or conclusion for which no response is  
10 required. To the extent one is, Defendant denies the allegations in this paragraph.

11           169. Paragraph 169 states a legal argument and/or conclusion for which no response is  
12 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
13 further denies there is any "Subclass."

14           170. Paragraph 170 states a legal argument and/or conclusion for which no response is  
15 required. To the extent one is, Defendant denies the allegations in this paragraph.

16           171. Paragraph 171 states a legal argument and/or conclusion for which no response is  
17 required. To the extent one is, Defendant denies the allegations in this paragraph.

18           172. Paragraph 172 states a legal argument and/or conclusion for which no response is  
19 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
20 further denies there is any "Subclass."

21           173. Paragraph 173 states a legal argument and/or conclusion for which no response is  
22 required. To the extent one is, Defendant denies the allegations in this paragraph.

23           174. Defendant repeats and incorporates its responses to each and every allegation  
24 contained in the corresponding paragraphs of Plaintiffs' Complaint above as if fully set forth  
25 herein.

26           175. Paragraph 175 states a legal argument and/or conclusion for which no response is  
27 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
28 further denies there is any "Subclass."

1           176. Paragraph 176 states a legal argument and/or conclusion for which no response is  
2 required. To the extent one is, Defendant denies the allegations in this paragraph.

3           177. Paragraph 177 states a legal argument and/or conclusion for which no response is  
4 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
5 further denies there is any "Subclass."

6           178. Paragraph 178 states a legal argument and/or conclusion for which no response is  
7 required. To the extent one is, Defendant denies the allegations in this paragraph.

8           179. Paragraph 179 states a legal argument and/or conclusion for which no response is  
9 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
10 further denies there is any "Subclass."

11           180. Paragraph 180 states a legal argument and/or conclusion for which no response is  
12 required. To the extent one is, Defendant denies the allegations in this paragraph.

13           181. Paragraph 181 states a legal argument and/or conclusion for which no response is  
14 required. To the extent one is, Defendant denies the allegations in this paragraph.

15           182. Defendant repeats and incorporates its responses to each and every allegation  
16 contained in the corresponding paragraphs of Plaintiffs' Complaint above as if fully set forth  
17 herein.

18           183. Paragraph 183. states a legal argument and/or conclusion for which no response is  
19 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
20 further denies there is any "Subclass."

21           184. Paragraph 184 states a legal argument and/or conclusion for which no response is  
22 required. To the extent one is, Defendant denies the allegations in this paragraph.

23           185. Paragraph 185 states a legal argument and/or conclusion for which no response is  
24 required. To the extent one is, Defendant denies the allegations in this paragraph.

25           186. Paragraph 186 states a legal argument and/or conclusion for which no response is  
26 required. To the extent one is, Defendant denies the allegations in this paragraph.

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1           187. Paragraph 187 states a legal argument and/or conclusion for which no response is  
2 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
3 further denies there is any “Subclass.”

4           188. Paragraph 188 states a legal argument and/or conclusion for which no response is  
5 required. To the extent one is, Defendant denies the allegations in this paragraph.

6           189. Paragraph 189 states a legal argument and/or conclusion for which no response is  
7 required. To the extent one is, Defendant denies the allegations in this paragraph.

8           190. Paragraph 190 states a legal argument and/or conclusion for which no response is  
9 required. To the extent one is, Defendant denies the allegations in this paragraph.

10          191. Defendant repeats and incorporates its responses to each and every allegation  
11 contained in the corresponding paragraphs of Plaintiffs’ Complaint above as if fully set forth  
12 herein.

13          192. Paragraph 192 states a legal argument and/or conclusion for which no response is  
14 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
15 further denies there is any “Subclass.”

16          193. Paragraph 193 states a legal argument and/or conclusion for which no response is  
17 required. To the extent one is, Defendant denies the allegations in this paragraph.

18          194. Paragraph 194 states a legal argument and/or conclusion for which no response is  
19 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
20 further denies there is any “Subclass.”

21          195. Paragraph 195 states a legal argument and/or conclusion for which no response is  
22 required. To the extent one is, Defendant denies the allegations in this paragraph.

23          196. Paragraph 196 states a legal argument and/or conclusion for which no response is  
24 required. To the extent one is, Defendant denies the allegations in this paragraph.

25          197. Paragraph 197 states a legal argument and/or conclusion for which no response is  
26 required. To the extent one is, Defendant denies the allegations in this paragraph.

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1           198. Paragraph 198 states a legal argument and/or conclusion for which no response is  
2 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
3 further denies there is any “Subclass.”

4           199. Paragraph 199 states a legal argument and/or conclusion for which no response is  
5 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
6 further denies there is any “Subclass.”

7           200. Paragraph 200 states a legal argument and/or conclusion for which no response is  
8 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
9 further denies there is any “Subclass.”

10          201. Paragraph 201 states a legal argument and/or conclusion for which no response is  
11 required. To the extent one is, Defendant denies the allegations in this paragraph.

12          202. Defendant repeats and incorporates its responses to each and every allegation  
13 contained in the corresponding paragraphs of Plaintiffs’ Complaint above as if fully set forth  
14 herein.

15          203. Paragraph 203 states a legal argument and/or conclusion for which no response is  
16 required. To the extent one is, Defendant denies the allegations in this paragraph.

17          204. Paragraph 204 states a legal argument and/or conclusion for which no response is  
18 required. To the extent one is, Defendant denies the allegations in this paragraph.

19          205. Paragraph 205 states a legal argument and/or conclusion for which no response is  
20 required. To the extent one is, Defendant denies the allegations in this paragraph.

21          206. Paragraph 206 states a legal argument and/or conclusion for which no response is  
22 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
23 further denies there is any “Class.”

24          207. Paragraph 207 states a legal argument and/or conclusion for which no response is  
25 required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant  
26 further denies there is any “Class.”

208. Paragraph 208 states a legal argument and/or conclusion for which no response is required. To the extent one is, Defendant denies the allegations in this paragraph. Defendant further denies there is any “Class.”

209. Paragraph 209 states a legal argument and/or conclusion for which no response is required. To the extent one is, Defendant denies the allegations in this paragraph.

### **JURY DEMAND**

Defendant demands a trial by jury of all claims in the Complaint so triable.

### **DEFENSES AND AFFIRMATIVE DEFENSES**

Defendant sets forth below their defenses and affirmative defenses. Each defense and affirmative defense is asserted as to all causes of action against it. By setting forth these defenses and affirmative defenses, Defendant does not assume the burden of proving any fact, issue or element of a claim where such burden properly belongs to Plaintiffs. Defendant also reserves the right to allege additional defenses and affirmative defenses as they become known or as they evolve during litigation, and to bring counterclaims if so appropriate.

#### **FIRST DEFENSE AND AFFIRMATIVE DEFENSE**

Plaintiffs fail to state a claim and/or sufficient facts upon which relief can be granted.

#### **SECOND DEFENSE AND AFFIRMATIVE DEFENSE**

Plaintiffs’ claims are preempted by federal law.

#### **THIRD DEFENSE AND AFFIRMATIVE DEFENSE**

Plaintiffs’ claims are barred, in whole or in part, by the doctrine of waiver.

#### **FOURTH DEFENSE AND AFFIRMATIVE DEFENSE**

Plaintiffs’ claims are legally frivolous and brought for an improper purpose.

#### **FIFTH DEFENSE AND AFFIRMATIVE DEFENSE**

Plaintiffs’ claims are barred by the safe harbor doctrine.

#### **SIXTH DEFENSE AND AFFIRMATIVE DEFENSE**

Plaintiffs lack standing to pursue their claims and/or injunctive relief.

#### **SEVENTH DEFENSE AND AFFIRMATIVE DEFENSE**

Plaintiffs’ claims are barred by the doctrine of unclean hands.

**EIGHTH DEFENSE AND AFFIRMATIVE DEFENSE**

One or more of Plaintiffs' claims are barred by the doctrine of accord and satisfaction.

**NINTH DEFENSE AND AFFIRMATIVE DEFENSE**

One or more of Plaintiffs' claims are barred by the applicable statutes of limitation and/or the equitable doctrine of laches.

**TENTH DEFENSE AND AFFIRMATIVE DEFENSE**

Plaintiffs' purported causes of action are barred or otherwise limited to the extent that Plaintiffs have failed to mitigate or avoid the purported damages alleged.

**ELEVENTH DEFENSE AND AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the First Amendment.

**TWELFTH DEFENSE AND AFFIRMATIVE DEFENSE**

Plaintiffs' claims are moot.

**THIRTEENTH DEFENSE AND AFFIRMATIVE DEFENSE**

Plaintiffs' claims were procured through champerty and maintenance.

**PRAYER FOR RELIEF**

Wherefore, Defendant respectfully requests that the Court:

1. Enter judgment in favor of Defendant and against Plaintiffs on all alleged claims for relief;
2. Dismiss the claims against Defendant with prejudice;
3. Require Plaintiffs and/or their lawyers to pay all of Defendant's attorney's fees and costs in defending this action; and
4. Grant such other and further relief as the Court deems just and proper.

Dated: October 2, 2020

BRAUNHAGEY & BORDEN LLP

By: /s/ Matthew Borden  
Matthew Borden

Attorneys for Defendant BA Sports Nutrition,  
LLC